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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,522	08/24/2000	Zeev Maor	00654759	8228

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EXAMINER

BERMAN, ALYSIA

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 09/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/582,522

Applicant(s)

MAOR ET AL.

Examiner

Alysia Berman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2002, 30 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt is acknowledged of the amendments filed March 19, 2002 and April 30, 2002 and the supplemental response filed July 11, 2002. Claims 1-6 have been amended. Claims 9-31 have been added. Claims 1-31 are pending. Claims 7 and 8 are withdrawn as directed to a non-elected invention. The status of claims 1-6 and 9-31 follows.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 and 9-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6, 9-26 and 29 are indefinite because claims 1 and 5 recite the abbreviation TDS. It is unclear what Applicant intends by this abbreviation. All terms should be fully written out in the claims the first time they appear followed by any abbreviations in parentheses for future use.

Claims 1-6, 9-26 and 29 are indefinite because claims 1 and 5 recite, "an ion composition **resembling** Dead Sea water." The term resembling makes it unclear what Applicant intends the ion composition of the water to be.

The term "clear" in claims 2 and 29-31 is a relative term which renders the claim indefinite. The term "clear" is not defined by the claim, the specification does not

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provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claims 25-28, 30 and 31 are indefinite because they recite the phrase Dead Sea water. It is unclear what Applicant intends by this limitation. Does Applicant intend that the water in the composition is obtained from the Dead Sea?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4, 5, 9-11, 13, 14, 18-22 and 25-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,943,432 (432).

US '432 is directed to compositions that contain a salt mixture (title and abstract). The composition can be in gelled form (abstract). For a salt composition that resembles

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the ion composition of Dead Sea water see column 2, lines 10-47. For a salt concentration within the instantly claimed range in a carrier such as water see column 3, lines 53-61. For gelling agents or viscosity modifiers see natural gums and cellulose esters and ethers at column 4, lines 9-15. For a transparent gel, which is considered equivalent to a clear gel, see column 4, lines 15-16. The phrase "up to" includes zero as a lower limit. *In re Mochel*, 470 F.2d. 638, 176 USPQ 194 (CCPA 1974). Therefore, claims 5, 18, 19, 22 and 28 do not require a hydrophilic active agent, a hydrophobic active agent or a fragrance.

US '432 does not explicitly disclose the concentrations of components as instantly claimed or a solubilizer or antioxidant *per se*.

US '432 discloses that the compositions can contain 1-20% glycol and/or glycerin at column 4, lines 20-22, both of which can act as solubilizers. US '432 discloses that the compositions can contain salicylic acid, an α -hydroxy acid which is a known antioxidant, at column 3, lines 38-41.

It is within the skill in the art to select optimal parameters in a composition in order to achieve a beneficial effect. *In re Boesch*, 205 USPQ 215 (CCPA 198). It would have been obvious for one skilled in the art to vary the proportions of components in a composition to arrive at the best compositions for the intended purpose. "It is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Only if the "results optimizing a variable" are "unexpectedly good" can a patent be obtained for the claimed critical range. *In re Antonie*, 559 F.2d 618, 620, 195 USPQ 6, 8 (CCPA 1977); see also

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In re Dillon, 919 F.2d 688, 692, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990) (in banc).

Therefore, absent evidence of unexpected results, the concentration ranges of components are not given patentable weight over the prior art composition.

It would have been obvious to one of ordinary skill in the art at the time of the invention to prepare the gel composition of US '432 with salicylic acid, glycol and/or glycerin and select optimal concentrations of components expecting to obtain a topical gel composition for treating psoriasis and acne.

Claims 3, 6, 12, 15-18 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,934,432 (432) as applied to claims 1, 2, 4, 5, 9-11, 14, 18-22 and 25-31 above, and further in view of US 4,749,563 (563).

US '432 teaches all the limitations of the claims as stated in the 35 U.S.C. 103(a) rejection above. It does not teach the solubilizers of claims 3 and 23, the antioxidants of claims 6 and 24, the hydrophobic active agents vegetable oils, free fatty acids or vitamins (claims 12 and 18), the gelling agents of claims 15 and 21 or a fragrance (claims 16, 17 and 22).

US '563 discloses avocado oil, a vegetable oil, as an emollient (col. 3, line 26), polysorbate 20 and polysorbate 80 (tween 20 and tween 80) as emulsifiers (col. 3, lines 32-36), butylated hydroxyanisole as an antioxidant (col. 3, lines 45-46), magnesium aluminum silicate, hydroxyethyl cellulose, hydroxypropyl cellulose and xanthan gum as thickeners (col. 3, line 67 to col. 4, line 3) and fragrances (col. 4, line 51) for use in skin care compositions. See the examples for free fatty acids and deionized water.

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It would have been obvious to one of ordinary skill in the art at the time of the invention to prepare the composition of US '432 using the skin care components of US '563 for their art-recognized benefits.

Response to Arguments

Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Correspondence

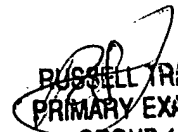
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alysia Berman whose telephone number is 703-308-4638. The examiner can normally be reached Monday through Friday between 9:00 am and 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 or 703-872-9307 for after-final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234 or 703-308-1235.


Alysa Berman
Patent Examiner
September 17, 2002


RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200